



Region Three Montana Fish, Wildlife & Parks
1400 South 19th Ave
Bozeman, MT 59718

July 18, 2012
Decision Notice for:

**Sixteenmile Creek Fishing Access Site
Proposed Acquisition and Development
Draft Environmental Assessment**

Proposed Action

Montana Fish, Wildlife & Parks (FWP) proposes to acquire 89.16 acres of land along a five-mile stretch of abandoned Milwaukee Railroad right-of-way approximately one mile west of Highway 89 and one-half mile west of Ringling, Montana, for the purpose of developing a day use fishing access site (FAS) on Sixteenmile Creek. FWP also proposes to construct a parking area for approximately eight vehicles at the eastern end of the property, an access road to and fencing around the parking area, installation of a vault latrine, and directional and informational signs.

Montana Environmental Policy Act

Montana Fish, Wildlife & Parks is required by the Montana Environmental Policy Act (MEPA) to assess significant potential impacts of a proposed action to the human and physical environment. In compliance with MEPA, an Environmental Assessment (EA) was completed for the proposed project by FWP and initially released for public comment on June 30, 2010.

Public comments on the proposed project were initially taken from June 30, 2010, through July 30, 2010. The EA was mailed to 50 groups and individuals. On July 29, 2010, the Meagher County Commissioners requested that a public meeting be held in White Sulphur Springs, MT. The initial meeting was postponed. No Decision Notice for the proposal was issued pending the public meeting. A decision was made to extend the public comment period for the proposal starting on April 1 to April 30, 2012. On April 11, 2012, a public meeting was held at the Meagher County Courthouse.

Summary of Public Comment

During the 2010 and 2012 comment periods, FWP received a total of one hundred and forty six (146) comments regarding the proposed action; one hundred and twenty three (123) comments supported the proposal, and twenty three (23) comments opposed the proposed action.

Comments supporting the proposed project:

One hundred and twenty three (123) total.

Examples of Comment Statements Supporting the Proposal

Comments:

“After reviewing the Sixteen Mile Fishing Access environmental assessment, we see no issues. Therefore, we support this project and ask that you continue with the project as laid out in the proposed action.”

“Personally, I strongly favor the purchase. Sixteen Mile creek is an angling treasure that has long been difficult for Montana anglers to access. Any access that can be acquired for the public and held in perpetuity should be taken advantage of. Besides, it appears that this acquisition is a bargain. I strongly support this effort.

FWP Response: Duly Noted

Comment:

I also urge that the proposed project include provisions for special (case-by-case) FWP permitting of limited motorized access to the FAS (and to Section 36) for the purpose of fishing (and hunting) by (and assisted/accompanied fishing and hunting by) disabled persons.

FWP Response: Based on current statutes, namely the “Good Neighbor Act,” FWP is restricted in allowing motorized travel in an FAS to administrative use only. Reference: MCA 23-1-128 “the off-road operation of an off-highway vehicle, as defined in 23-2-801, within state parks and fishing access sites is prohibited except for administrative purposes.’

Comment:

“The conclusions of the discussions of projected use levels of the FAS in the text of the EA are limited to its analysis of projected use as a fishing access site and provide almost no projection analyses of the level of use for access to Section 36 for other uses.

FWP Response: The purpose of this EA is to assess the feasibility of acquiring the property for the development of a Fishing Access Site for Sixteenmile Creek, not for establishing a travel corridor to Section 36. Any attempt to project anticipated use into Section 36 is outside the scope of this review.

Comment:

“If a surface survey of potential cultural/historic resources within the partially disturbed, currently land-locked State Section 36 has not been conducted, you might consider coordinating with SHPO on whether it would be necessary to do so as part of the MEPA process since increased use of Section 36 is a “connected action” to the acquisition and development of the FAS.”

FWP Response: The purpose of this EA is to assess the feasibility of acquiring the property for the development of a Fishing Access Site for Sixteenmile Creek.

Conducting a surface survey of cultural and historical resources within Section 36 is outside the scope of the review.

Comment opposing the proposed project: twenty three (23) total.

Comments -- Bridges and Tunnels:

- “After a brief review of the bridges across the property and the tunnel on State Section 36, William H. Anderson, P.E., P.L.S. (Anderson Engineering, Inc.), determined that the bridges need substantial repair work and are probably in an unsafe and hazardous condition.”
- “Further, most of the wood bridge pilings are rotting at the low water lines and need replaced, and a number of the cross braces between the pilings are no longer functional and are in need of replacement or repair.”
- “Of equal concern is the condition of the tunnel located on the State Section 36; Woody debris in and around the tunnel, with rock falling at the ends. The interior of the structure is failing and in dire need of repair.”

FWP Response:

- Public access along the easement is for stream access. FWP is currently not making any commitment to pedestrian use of the bridges or their maintenance. Prior to allowing public use of the bridges, FWP will conduct a structural analysis. FWP also recognizes that over time these bridges will require periodic maintenance, and FWP will determine on a case by case basis the feasibility and practicality of their maintenance, repair, or continued use by the public.

Additional funding would be needed to conduct a structural analysis of each bridge. The State Historical Preservation Office would provide an opinion of the historical value of the structures which would provide a direction for the management of the bridges. Routine inspections to evaluate the structural integrity will be conducted annually.

- The tunnel is not the only access to the DNRC land. The tunnel is located at least 200-300 yards west of the DNRC boundary providing the public access from the proposed FAS property without having to go through the tunnel. It will be the responsibility of DNRC to determine the structural integrity of the tunnel and judge its safety for public access. It is not FWP’s intent to maintain or arrest the decay of the tunnel under this proposal. Additionally, passage through the tunnel would be at the public's own risk. The Montana Recreation Responsibility Act states; “providing that a person who engages in a sport or recreational opportunity assumes the inherent risks in that sport or recreational opportunity and is responsible for injuries and damages resulting from those inherent risks; limiting the liability of the providers of a sport or recreational opportunity; clarifying that a provider is not required to eliminate, alter, or control the inherent risks within a particular sport or recreational opportunity.”

Comments -- Trespass:

- “Have had a number of poaching incidents based on people accessing state land by Sixteen and continuing on to our property.”

- “A number of people each year park on the county road and walking across our property to get to Sixteenmile Creek. These are blatant misinterpretations of the stream access law as they are far from the high water mark when they do this.”
- “Ask the state to sign their boundaries more clearly in several locations in an effort to decrease the number of incidents of trespassing and poaching.”
- “Sign this new property very, very clearly before opening it to the public.”
- “It is a remote location for the average fisherman; it will provide an access for poachers in the fall, and so on.”
- “This action will further deteriorate the relationship of local landowners and sportsman due to increased trespass.”
- “People on ATV’s seem to be the biggest issue.”

FWP Response: FWP would manage the access to include a trailhead map describing private property boundaries. Both sides of the corridor along Sixteen Mile Creek would be signed periodically to define actual property boundaries. FWP would also consider posting information regarding the state’s Stream Access Law and the limitations provided therein as it applies to anglers’ use of the stream on adjoining private land.

ATV use will be prohibited on the FAS or outside the parking area.

Comment -- Weeds:

- “We are skeptical that the Statewide Integrated Weed Management Plan will be adhered to or sustained; we fear that if Sixteenmile Creek becomes a fishing access the noxious weed problem will escalate and be an issue again.”
- “The Meagher County Conservation District is concerned about the noxious weeds in the Sixteen Mile Canyon. The area is difficult to control due to rocky, shallow soils, numerous stream crossings, and steep slopes that limit ground application equipment.”
- “Knapweed and the continuation of controlling it, what are the actual costs?”

FWP Response: FWP believes that the Statewide Integrated Weed Management Plan is a reliable framework to establish a collaborative relationship with both the county and adjacent landowners to reduce noxious weed infestations and limit the transport of the seeds to adjacent property. Costs associated for weed control are considered as part of the overall operations and maintenance costs of an FAS. FWP’s proposal to limit access to non-motorized methods of transportation will also serve to limit the spread of noxious weeds. Additionally, it is FWP’s intention to contract with Meagher County to continue their involvement in the weed control efforts on this property.

Comments -- Fencing:

- “There are potentially 10 miles of fence along this route that would have to be built and maintained. What are the fencing plans?”
- Cattle have strayed due to fence and gate abuse by the public.”
- “State Section 36 is managed as part of a larger whole; there are no fences or markers that distinguish this parcel from the rest. Would the answer to the potential problem be to fence both sides of the right of way and the state section, and if so, how would that fit into my grazing operation? In addition, who pays for and maintains the fences? How does this effect cattle and wildlife movement?”

FWP Response: FWP will continue to address fencing issues with neighboring landowners recognizing that fencing is beneficial for both parties. FWP will collaborate on a cost-share basis with willing landowners for the purpose of maintaining boundary fencing. An assessment would be conducted prior to development with willing adjacent landowners to determine any fencing needs.

FWP will not fence Section 36, which is outside the scope of this proposal.

Comment -- Streambed Stabilization:

- “Who pays for the stream bed stabilizations that will be required after years of over grazing?”

FWP Response: FWP would assume the responsibility for the restoration of the stream bank within its property boundaries and take steps to eliminate grazing within the property corridor in order to allow for re-establishment of vegetation of the stream bank.

Comment -- Project Costs:

“What is the true cost of this project?”

FWP Response: The total cost of the project cannot be determined beyond what has been stated in the Draft EA. Typically, a land appraisal is valid for a period of one year. With a reappraisal of the property, the overall cost may change but is uncertain at this time in the process.

Comments -- Grazing:

- “Several private land owners have locked gates along the right of way, and it is summer grazing for their various cattle herds.”
- “If the route is open only to service vehicles, what will happen to the area ranchers who have been traveling the road for farming and ranching purposes since the railroad abandoned the right of way? Some of these ranchers have established rights through prescriptive use to use the road for such purposes.”

FWP Response: FWP has considered this issue through the public process and concerns expressed by the adjacent landowners regarding stream bank restoration. The proposed corridor would remain closed to all vehicular travel and the movement of livestock through the corridor and grazing would be prohibited. FWP currently has no formal documentation to substantiate the claim of prescriptive use.

Comment -- Enforcement:

- “According to Mike Martin, FWP Region 4 Warden Captain, local wardens would also be required to spend additional time patrolling the area and addressing trespass issues. Despite prohibiting vehicle use of the road, opening the area to the public would attract more people to the area and would increase the incidence of trespass onto neighboring private land. The MT FWP wardens are already limited in the time they can spend patrolling, and spend most of their time responding to trespass issues call in by local landowners.”

FWP Response: Enforcement is an integrated component of the administration and operations of the fishing access site program. Montana Fish, Wildlife & Parks is mandated by Montana law to protect, perpetuate, enhance, and regulate the wise use of the state's natural and cultural resources for the benefit of the general public. This would include being responsive to landowner complaints and to investigate trespass for unlawful use.

Comments -- Fisheries:

- “Deterioration of critical fish or wildlife habitat.”
- “Increased pressure would have a detrimental effect.”
- “Sixteenmile Creek is usually too muddy to fish until the first week in July and this stretch often dries up to a trickle in August.”
- “This creek at the Ringling location can be dry by August in a normal year.”

FWP Response: FWP has requested permission from the neighboring landowners on Sixteen Mile Creek to access their properties in order to conduct a thorough fisheries resource survey. If permission is received, FWP will conduct the study and make the results public.

Comments -- Purchase Price vs. True Property Values:

- “As a sportsman the spending of \$3,532.97 an acre is downright outrageous waste for the sportsman and tax payers’ money.”
- “Purchase of the property is an invitation for recreationists and landowners to have conflicts.”
- “The asking price for the property is still an inflated price at \$315,000.”
- “Page 7 of the DEA states that the purchase would allow FWP to “preserve this stretch of riparian and open-space habitat.” How is opening up an area to public access going to preserve it? Given the fact that the right of way is only a 100-200 feet wide gravel and dirt path, there is not any habitat to protect.”
- “There are many title problems affecting the title to the property.”

FWP Response: The land value was last appraised in 2008. An appraisal is valid for a period of one year. FWP would refresh the land appraisal to better reflect the current market. Funding for the acquisition of this property will come from a grant provided by the Montana Fish, Wildlife & Parks Conservation Trust; thus, no license dollars or general tax dollars would be involved in the purchase of the property. FWP purchase of this property would allow FWP to more actively manage the riparian corridor to ensure biological integrity and access opportunity.

Comments -- Maintenance:

- “Where that money will come from to properly maintain the area and make it safe for the public.”
- “Safety and the maintenance of the roads.”
- “The public will be hiking at least 2 miles and most likely will not travel at least 2 miles to use the facility or dispose of their garbage properly. It is logical to assume that there will be issues with litter.”

FWP Response: Fishing Access Sites are routinely inspected and evaluated for maintenance issues which are then prioritized for action. Funding for maintenance is derived from a mix of the state's Fishing License account and federal aid, such as Dingell-Johnson funding. The majority of the fishing access sites around the state are "pack-in /pack-out."

Comments -- Legal Access:

- "The county cannot, under Montanan law, expand the scope of the prescriptive easement. Thus, any such easement is not contiguous to and does not allow travel from the county road onto the property described in the grant from the Ringling Stock growers."
- "Most importantly, the proposed easement does not grant any rights to the public or successor owners of the land owned by the grantees. In essence, it was a personal license to the people listed therein, and no others."

FWP Response: The question of legal access will require a definitive legal opinion prior to any purchase. FWP's legal staff has reviewed the files, and they have concluded that sufficient legal access exists to justify the pursuit of this acquisition.

Comments -- Wildlife:

- "During the past couple of years, bobcats and lynx have been seen."
- "The animal is listed as threatened under the Endangered Species Act. As such, the public should not be allowed to disturb the area until a study is completed to determine how many lynx are in the area and where they roam."

FWP Response: The habitat within the proposed property is not conducive to a year-round population for wolves, lynx, or bobcat. These species have the ability for broad transient movement and would not be affected by the limited human activity anticipated within the proposed 89 acre corridor.

Comments -- Tourism:

- "Page 20, paragraph 9c, of the DEA states that the purchase of the property will improve tourism in the area, and further provides, in discussions on economic impact on page 20, 9c, that the purchase would improve tourism in the area. How could marginal fishing, the opportunity to walk along a gravel road, and a parking area that can only accommodate 8 vehicles promote tourism? There are not "tourist" type businesses in Ringling, so there will be absolutely no reason for the public to stop and shop. Given this failure to discuss reality, the DEA does not comply with MEPA."

FWP Response: According to the Montana Office of Tourism – Department of Commerce, "the project has the potential to positively impact the tourism and recreation industry economy." They further addressed the quality and quantity of recreation and tourism opportunities by stating that "the project has the potential to improve the quality and quantity" of these opportunities.

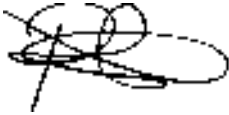
Decision

Based on the Environmental Assessment, public comment, and FWP evaluation, it is my decision to proceed with Alternative B, the proposed action of acquiring 89.16 acres of land for purposes of establishing a fishing access along Sixteen Mile Creek.

I find there to be no significant impacts on the human and physical environments associated with this project. Therefore, I conclude that the Environmental Assessment is the appropriate level of analysis, and that an Environmental Impact Statement is not required.

Appeal

The development portion of this decision is project is subject to appeal, which must be submitted to the FWP Director (Mr. Joe Maurier, Director, Montana Fish, Wildlife & Parks, PO Box 200701, Helena, MT 59620-0701) in writing and postmarked within 30 days of the date on this decision notice. The appeal must specifically describe the basis for the appeal, explain how the appellant has previously commented to the department or participated in the decision-making process, and lay out how FWP may address the concerns in the appeal. If you have questions regarding this decision notice, please contact Ray Heagney, Fishing Access Site Manager at 406-994-6987.



Patrick J. Flowers
Regional Supervisor
